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FILE

June 2, 1992

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Suite 222
Washington, D.C. 20554


Re: GC Docket No. 92-52
Reexamination of the Policy
Statement on Comparative
Broadcast Hearings

Dear Ms. Searcy:

Transmitted herewith, on behalf of Valley Public Television, Inc., licensee of noncommercial educational television broadcast station KVPT, Fresno, California, are an original and four (4) copies of its Comments in connection with the above-referenced docket.

Should any questions arise concerning this matter, please communicate with this office.

Very truly yours,



Timothy R. Schnacke
Counsel for
Valley Public Television, Inc.

Enclosures

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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JUN - 2 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	GC Docket No. 92-52
)	
Reexamination of the Policy)	
Statement on Comparative)	
Broadcast Hearings)	
)	RM-7739
)	RM-7740
)	RM-7741

COMMENTS OF VALLEY PUBLIC TELEVISION, INC.

Valley Public Broadcasting, Inc., by its attorneys, hereby submits its comments on the Commission's proposals in the above-captioned proceeding.

1. Valley Public Television, Inc. ("Valley"), is a California, non-profit, public benefit corporation that is organized for the purpose of establishing and providing noncommercial educational television services in the San Joaquin Valley of Central California. Valley currently has applications pending for a full-power noncommercial educational station to operate on Channel *39 (File No. BPET-900904KF), and for TV translators to operate on Channels 36 (File No. BPTT-JC0624QF) and 65 (File No. BPTT-8912084Q), all in the Bakersfield, California, area of the San Joaquin Valley. Valley's application for Channel *39 is mutually exclusive with an application filed by Community Television of Southern California (KCET(TV), Los Angeles) for Channel *39 at Bakersfield (File No. BPET-881012KE). Valley prepared its application and exhibits thereto for Channel

*39 on the basis of the Commission's then existing policy concerning noncommercial educational applicants and is expecting a hearing designation order to be issued in that proceeding in the near future.

2. In Paragraphs 39 and 40 of its Notice of Proposed Rulemaking in this proceeding, the Commission tentatively concluded that the standard used to compare noncommercial applicants in the comparative hearing process should be eliminated in favor of a some kind of modified version of the "point system" which was proposed for commercial applicants. Comments were also invited to address "whether the criteria used to select commercial applicants are relevant in noncommercial proceedings and whether [the Commission] should use different or additional criteria." While Valley agrees with the Commission that the current standard is vague and is in need of reform, the Commission should not apply the criteria proposed for commercial stations to noncommercial educational applicants simply because it is convenient to do so. To the contrary, due to the unique nature of noncommercial educational broadcasting, the Commission should consider the revision of the noncommercial criteria but only in a separate proceeding.¹

3. The Commission has long recognized that noncommercial educational licensing cases are unique and that its current comparative criteria for commercial broadcast hearings are

¹ In footnote 6 of the Notice of Proposed Rulemaking, the Commission acknowledged that it might be beneficial "to sever one or more of the issues raised herein for separate resolution."

meaningless in comparative proceedings between mutually exclusive applicants for noncommercial facilities. See New York University, 10 R.R. 2d 215, 217 (1967); see also Pacifica Foundation, 21 F.C.C. 2d 216, 217-18. The Commission has thus recognized that it must formulate separate and distinct noncommercial comparative criteria designed to take into consideration these differences in the noncommercial service. Additionally, the impetus for comparative hearing reform is largely based on abuses which are relevant only to commercial broadcast applicants. These substantial differences, by themselves, compel the separation of the issues raised by the Commission for noncommercial stations.

4. Moreover, the Commission has asked for comments on whether application of commercial comparative criteria is relevant in the noncommercial setting. However, because it is reasonable to assume that the Commission will adopt some revisions to the commercial comparative criteria after receiving comments on its proposals, until the adoption of those revisions, Valley cannot reasonably comment on the relevance of that criteria to noncommercial applicants.

5. Finally, many of the Commission's proposals in the Notice raise significant issues for commercial applicants which become unnecessarily complicated when extended to a noncommercial comparative setting. For example, the use of a point system to objectively determine preferences is seemingly at odds with the noncommercial comparative criteria which looks at, among other

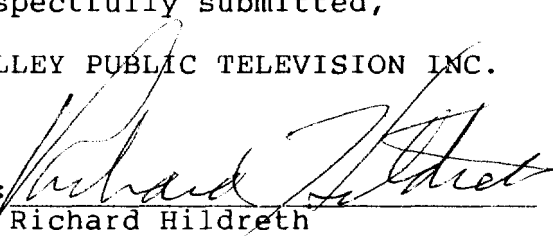
things, the programming of the applicant. Also, the Commission's proposal to adopt a "service continuity preference" may be fundamentally inconsistent with the structure of noncommercial governing boards, which, in order to provide broad public participation, change directors relatively frequently.


6. Valley is concerned that discussion of the noncommercial comparative criteria as an afterthought to revision of the commercial criteria will only serve to muddy the already dark waters in this area. Therefore, it is mandatory that the Commission extend the same level of reasoned decision making to noncommercial applicants as it is attempting to do for commercial applicants in the comparative context by severing the proposals discussed in Paragraphs 39 and 40 of its Notice for consideration in a separate proceeding.

WHEREFORE, in view of the foregoing, it is respectfully requested that the Commission sever the matter of any new noncommercial comparative criteria from the instant proceeding and that it consider such matter in an entirely separate proceeding directed solely to the review of comparative criteria for noncommercial broadcast stations.

Respectfully submitted,
VALLEY PUBLIC TELEVISION INC.

By:


Richard Hildreth


Timothy R. Schnacke

Its Attorneys

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Date: June 2, 1992

CERTIFICATE OF SERVICE

I, Delphine I. Davis, a secretary in the law firm of Fletcher, Heald & Hildreth do hereby certify that true copies of the foregoing "Comments of Valley Public Television, Inc." were hand-delivered this 2nd day of June, 1992, by messenger to the following:

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Commissioner Sherrie P. Marshall
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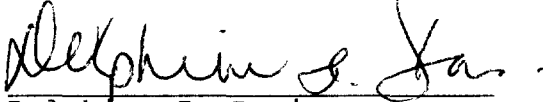
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Delphine I. Davis